

REMARKS

Reconsideration of this application, as amended, is respectfully requested. The following remarks are responsive to the Office Action mailed October 8, 2002.

Claims 1-10 are pending.

Claims 1-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 5,091,920 issued to Ikeda *et al.* ("Ikeda").

35 U.S.C. § 102(b) Rejection

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claims 1-10 are not anticipated by Ikeda under 35 U.S.C. 102(b) because Ikeda does not disclose each and every limitation of the claims.

The Examiner has rejected claims 1, 5, 9 and 10 under 35 U.S.C. 102(b) as anticipated by Ikeda.

Claim 1, as amended, states as follows:

1. A method of automatically determining a peak level of a signal propagated on a carrier medium, the method including:
detecting a traversal of a noise threshold level, determined relative to a noise signal, by a data signal;
determining whether the data signal traverses a peak level within a predetermined time interval after the detection of the traversal of the noise threshold level; and
varying the peak level in accordance with the determination
whether the data signal traversed the peak level.

(Claim 1, emphasis added).

Ikeda fails to disclose varying the peak level in accordance with a determination whether a data signal traversed a peak level. Instead, Ikeda, in Fig. 10 discloses an ATC (Automatic Threshold Control) Circuit 22 for outputting a variable threshold value, which varies in accordance with the peak voltage level. (Col. 9, lines 33-35, col. 10, lines 6-8). Ikeda discloses varying the threshold value as a percentage of a peak level of an input signal. (Col. 2, lines 19-24). For example, the threshold value is determined to be about 50% of the input voltage and changes approximately linearly with respect to a change in the input waveform. (Col. 6, lines 33-37). As such, Ikeda does not disclose varying the peak level in accordance with the determination of whether the data signal traversed the peak level, as is recited in claims 1, 5, 9 and 10.

Furthermore Ikeda fails to disclose detecting a traversal of a noise threshold level by a data signal. As stated previously, the ATC disclosed in Ikeda varies the threshold value as a percentage of the input signal voltage. The ATC of Ikeda does not, for example, have a comparator for comparing a noise threshold value with a data signal. Instead, Ikeda compares a variable threshold, which varies in proportion to the input signal, with one or more constant threshold values. (Col. 10, lines 8-51). In contrast, claims 1, 5, 9 and 10 require determining a peak level of a signal by detecting a traversal of a noise threshold signal by a data signal.

Ikeda still further fails to disclose determining whether the data signal traverses a peak level within a predetermined time interval after the detection of the traversal of the noise threshold level. As stated above, the ATC of Ikeda does not, for example, have a comparator for comparing a noise threshold value with a data signal. Because the ATC of Ikeda does not detect the traversal of a noise threshold level by a data signal, it cannot determine whether a data signal traverses a peak level within a predetermined time interval after the detection of the traversal of the noise threshold level, as is recited in claims 1, 5, 9 and 10.

Therefore, for the above reasons, Ikeda does not anticipate claims 1, 5, 9 and 10 under 35 U.S.C. §102(b) because Ikeda does not disclose each and every limitation of claims 1, 5, 9 and 10. Accordingly, claims 1, 5, 9 and 10 are patentable over Ikeda and in condition of allowance. Given that claims 2-4 and 6-7 depend directly on claims 1 and 5

respectively, claims 2-4 and 6-7 are not anticipated by Ikeda and are in condition of allowance.

It should furthermore be noted that the above amendments to the claims have not been made within view to overcoming any prior art of which the Applicant is aware, or that has been cited in the present Office Action. The above amendments have been made with a view to modifying the form of the claims. For example, the word "steps" has been removed from the method claims so as to avoid interpretation of the relevant method claims under 35 U.S.C. § 112, paragraph 6.

It is respectfully submitted that in view of the amendments and remarks set forth herein, the above 35 U.S.C. § 102(b) rejection has been overcome. Accordingly, Applicant respectfully requests allowance of claims 1-10.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact André Marais at (408) 947-8200.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Sanjeet K. Dutta
Sanjeet K. Dutta
Reg. No. 46,145

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(408) 947-8200